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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

JESUS FIERRO,

H026089

Plaintiff and Respondent,

(Monterey County
Superior Court
No. M55867)

v.

GABILAN MANUFACTURING,

Defendant and Appellant.

_____ /

Defendant Gabilan Manufacturing (Gabilan) produces motorcycle mufflers using power press machines. Engineers employed by Gabilan designed and manufactured a power press machine for Gabilan to use in its production of mufflers. This machine was designed so that it had a guard at the point of operation to protect the production operator from injury. Plaintiff Jesus Fierro was employed as a production operator by Gabilan. Fierro's supervisor removed the guard from the power press machine and asked Fierro to help him remedy a problem with the machine. While assisting his supervisor, Fierro's hand was crushed by the machine at the point of operation.

Fierro filed an action against Gabilan under Labor Code section 4558, which provides an exception to the exclusivity of worker's compensation where an

injury occurred because a point of operation guard had been removed from a power press machine. A jury awarded Fierro \$300,000. On appeal, Gabilan claims that it could not be held liable under Labor Code section 4558 because it was both Fierro's employer and the manufacturer of the power press machine. We reject this assertion and affirm the judgment.

I. Analysis

Worker's compensation benefits are ordinarily the exclusive remedy for an injured employee. (Lab. Code, §§ 3601, 3602.) However, Labor Code section 4558 provides an exception to the exclusivity of worker's compensation benefits. (Lab. Code, §§ 3602, subd. (a), 4558.) "An employee . . . may bring an action at law for damages against the employer where the employee's injury or death is proximately caused by the employer's knowing removal of, or knowing failure to install, a point of operation guard on a power press, and this removal or failure to install is specifically authorized by the employer under conditions known by the employer to create a probability of serious injury or death." (Lab. Code, § 4558, subd. (b).)

In this case, Fierro's action was premised on his supervisor's removal of the point of operation guard. "'Removal' means physical removal of a point of operation guard which is either installed by the manufacturer or installed by the employer pursuant to the requirements or instructions of the manufacturer." (Lab. Code, § 4558, subd. (a)(5).) "'Employer' means a named identifiable person who is, prior to the time of the employee's injury or death, an owner or supervisor having managerial authority to direct and control the acts of employees." (Lab. Code, § 4558, subd. (a)(1).)

Gabilan does not claim on appeal that Fierro's supervisor was not an "employer" within the meaning of Labor Code section 4558. Nor does Gabilan

contend that Fierro's supervisor did not physically remove a point of operation guard that had been installed by the manufacturer. Gabilan's sole contention on appeal is that it did not qualify as a "manufacturer" within the meaning of Labor Code section 4558.¹

"'Manufacturer' means the designer, fabricator, or assembler of a power press." (Lab. Code, § 4558, subd. (a)(3).) "No liability shall arise under this section absent proof that the manufacturer designed, installed, required, or otherwise provided by specification for the attachment of the guards and conveyed knowledge of the same to the employer. Proof of conveyance of this information to the employer by the manufacturer may come from any source." (Lab. Code, § 4558, subd. (c).)

There was substantial evidence at trial that Gabilan's engineers had designed, fabricated and assembled the power press. It was also established at trial that the Gabilan engineers who designed the power press had attached a point of operation guard to the machine. This evidence easily established that Gabilan came within Labor Code section 4558's definition of a manufacturer.

Gabilan maintains that Labor Code section 4558 must be construed to preclude a finding that a single entity was both the manufacturer and the employer. It relies on Labor Code section 3602, subdivision (b). Labor Code section 3602, subdivision (a) provides that "the right to recover compensation is, *except as specifically provided in this section and Sections 3706 and 4558*, the sole and exclusive remedy of the employee or his or her dependents against the employer, and the fact that either the employee or the employer also occupied another or dual capacity prior to, or at the time of, the employee's industrial injury shall not permit

¹ A similar contention was rejected by the First District Court of Appeal in *Flowmaster, Inc. v. Superior Court* (1993) 16 Cal.App.4th 1019. (*Flowmaster* at pp. 1029-1030.)

the employee or his or her dependents to bring an action at law for damages against the employer.” (Lab. Code, § 3602, subd. (a), emphasis added.) Since Labor Code section 3602, subdivision (a) is expressly *inapplicable* where Labor Code section 4558 applies, it provides no support for Gabilan’s contention.

Labor Code section 3602, subdivision (b) is no more helpful to Gabilan. This subdivision does not even purport to modify or limit Labor Code section 4558 but instead provides an *additional* exemption from the exclusivity of worker’s compensation. “An employee, or his or her dependents in the event of his or her death, may bring an action at law for damages against the employer, as if this division did not apply, in the following instances: [¶] (1) Where the employee’s injury or death is proximately caused by a willful physical assault by the employer. [¶] (2) Where the employee’s injury is aggravated by the employer’s fraudulent concealment of the existence of the injury and its connection with the employment, in which case the employer’s liability shall be limited to those damages proximately caused by the aggravation. The burden of proof respecting apportionment of damages between the injury and any subsequent aggravation thereof is upon the employer. [¶] (3) Where the employee’s injury or death is proximately caused by a defective product manufactured by the employer and sold, leased, or otherwise transferred for valuable consideration to an independent third person, and that product is thereafter provided for the employee’s use by a third person.” (Lab. Code, § 3602, subd. (b).)

Gabilan seems to be claiming that subdivision (b)(3) reflects the Legislature’s intent to preclude an employer from incurring liability that arises from being *both* the employer and the manufacturer of a product. Gabilan’s contention is difficult to understand. Labor Code section 3602, subdivision (b)(3) is directed at the situation where a person is injured by a defective product that coincidentally happens to be manufactured by the person’s employer even though

the person did not obtain the product directly from the employer. The type of product is not restricted. In contrast, Labor Code section 4558 is directed at an employer's affirmative conduct in the workplace that exposes an employee to the extreme danger posed by a power press from which the point of operation guard has been removed. The fact that these two statutes address completely different situations rebuts any inference that the Legislature used one to express its intent with regard to the other.

Nevertheless, Gabilan seems to be arguing that we must infer such an intent from the fact that section 3602, subdivision (b)(3) does *not* create an exemption from worker's compensation exclusivity where the employer-manufacturer *directly provides* the employee with the defective product. Because Gabilan concedes that Labor Code section 4558 is unambiguous, we cannot see how we could interpret it other than by its plain language. It would be improper to draw conclusions about its meaning from the Legislature's failure to provide for other exemptions in other statutes. The simple fact that Gabilan meets section 4558's explicit definitions of "employer" and "manufacturer" is the end of the inquiry.

II. Disposition

The judgment is affirmed.

Mihara, J.

WE CONCUR:

Bamattre-Manoukian, Acting P.J.

McAdams, J.